

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 8987 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

-
1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MM REHAN
VERSUS
GOVERNMENT OF GUJARAT

Appearance:

MR DP VORA for the Petitioner
MR VB GHARANIA for the Respondents.

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 15/08/1999

C.A.V. JUDGMENT

1. Heard the learned counsel for the parties,
perused the special civil application and the draft

amendment.

2. The petitioner was recruited as Junior Clerk under the Centralized Recruitment Scheme in the year 1967. He later on appears to have been promoted to the post of Senior Clerk. In the year 1987, the Gujarat Public Service Commission (hereinafter referred to as "the Commission") invited applications for making selection on the post of Employment Officer. In response to the said advertisement of the Commission, the petitioner applied for the post. He was selected by the Commission for the post and in the year 1988 he was appointed as Employment Officer. It is not in dispute that this appointment was subject to the condition that the petitioner will have to pass Pre-Service Training Examination as provided under the Gazetted Officers Pre Services Examination Rules, 1970. In 1991, the petitioner appeared in the said examination on three occasions but he failed. The petitioner made an application to the Government for granting him the additional chance to appear in the Pre Service Training Examination, which application found favour with the Government and the petitioner was granted one additional chance to appear in the said examination. This time the petitioner has not appeared in the examination. He made a request to the Government not to treat the said chance of having been exhausted by the petitioner, which request was accepted by the Government and once again the additional chance to appear and pass the Pre Service Training Examination has been granted. It is the grievance of the petitioner that the petitioner could not avail of that chance on account of non-communication of the examination schedule by the respondent No.3. When the petitioner was sought to be reverted from this post at that time the petitioner has approached to this court by filing this petition.

3. This petition has been submitted by the petitioner in this court on 11-12-1997, which has come up for preliminary hearing on 12-12-1997, on which date, notice was issued. Thereafter, from time to time, this matter has been adjourned. The petitioner filed a draft amendment bringing on record the subsequent events which have taken place. From this draft amendment, I find that under the order dated 18-12-1997, the petitioner was reverted to the post of Senior Clerk. This order has been pasted at his residence. By this amendment, the petitioner prayed for quashing of that order.

4. Learned counsel for the petitioner contended that the reversion of the petitioner from the post of

Employment Officer, Class II, to that of Senior Clerk is contrary to the decision of the Apex Court in the case of Hussain Sasansaheb vs. State of Maharashtra reported in AIR 1987 SC 1627. The petitioner has been appointed on the post of Employment Officer, Class II, by direct recruitment and in case for the reason that he has not passed the examination, he cannot be reverted. It has next been contended that the respondents have granted one additional chance to the petitioner to appear in the Pre Service Training Examination and before he could have availed of that chance, he has been reverted. Lastly, it is contended that until that chance is availed of by the petitioner and he fails, there is no question of his reversion from the post of Employment Officer, Class II.

5. Learned counsel for the respondents, on the other hand, supported this action of reverting the petitioner to the lower post.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. The Apex Court in the case of Hussain Sasansaheb vs. State of Maharashtra (supra) held that a direct recruit to a post cannot be reverted to a lower post. It is further stated that a promotee can only be reverted from the promotion post to the lower post from which he was promoted. The facts of that case which were there before the Apex Court are to be taken briefly. The appellant therein was appointed by direct recruitment to the post of Assistant Deputy Education Inspector. He challenged that reversion order by filing a suit which had been decreed, but on appeal, the High Court reversed the same. In that case before the High Court, the Government Pleader conceded that the appellant therein was appointed to the post of A.D.E.I. as direct recruit and that he was not a departmental promotee who has been promoted from the post of Primary Teacher to the post of A.D.E.I.

8. The facts of this case are distinguishable from the facts of that case. The services of the petitioner who has been appointed on a temporary post (Probationary) on the post of Employment Officer, Class II, would have been terminated as he has not passed the Pre Service Training Examination which was one of the conditions but as he was having the lien in the department on the lower post instead of terminating his services he was sent back to his original post. It is a case where the respondents have acted fairly and

reasonably and in the larger interest of the petitioner and instead of terminating his services, he was sent back to the post of Senior Clerk where he was having the lien and he was continued thereon. It is a lesser evil which has been done to the petitioner otherwise his services could have been terminated. I fail to see how such a contention can be justified by the learned counsel for the petitioner which if we go by the substance of the same may if accepted results ultimately in termination of the services of the petitioner.

9. Much emphasis has been provided by the learned counsel for the petitioner on the fact that one additional chance has been given to the petitioner. It is a case where the petitioner has been given the benefits which were not legally available to him. Here I may make reference to the provisions of Rules, 1970. Rule 3 provides that these rules shall apply to Gazetted Officers appointed in the Government office otherwise than by promotion. Rule 4 of the Rules, 1970, provides that the examination shall have to be passed in not more than three chances within specified period. Proviso 2 to the Rule 4 provides that the persons belongs to scheduled casts and scheduled tribes may be allowed one additional chance which shall have to be availed of within a period of one year from the date of declaration of the result of the examination at which the last normal chance should have been availed of. Rule 5 of the Rules, 1970 makes a provision for termination of the services of a direct recruit who fails to pass the examination as required under Rule 4. This Rule reads, "if a direct recruit fails to pass the examination as required under these rules, his services shall be terminated". (Emphasis Provided). Proviso to Rule-5 empowers the State Government where it is satisfied that the officer could not pass the examination at which he had last chance for reasons beyond his control or that he fails to pass such examination by a very narrow margin of marks, the State Government after recording the reasons in writing, give him one more chance on payment of examination fee of Rs.30/- to appear in the examination.

10. In this case, one chance has been given to the petitioner but he failed to avail of the same. Then second chance has been given. Then again third chance has been given but what he contended that he could not avail of the same as he was not informed of the programme of the examination by the respondent No.3. this is a question which has to be decided by the authority, i.e. the respondent No.1 on the basis of

evidence. The respondent-State has exercised its power under proviso to Rule 5 of Rules, 1970 and taking it to be a case of reasons beyond control of the petitioner to appear in the examination one additional chance has been granted. Now the petitioner is contending that he could not avail of that chance for the reason that the examination programme was not informed to him by the respondent No.3 but the respondents contended that he himself has not availed of that chance. This point has to be decided by the respondent NO.1.

11. This writ petition is disposed of in terms that the petitioner may file a detailed representation in respect of his grievances before the respondent No.1 and the respondent No.1 shall decide the same within a period of one month and where it decided that the petitioner is not responsible not to avail of the additional chance given to him for his own but it is because of the fault of any of the respondents, he may be permitted to avail of that chance and ultimately if he pass the examination then the matter may be considered to restore to him on the post of Employment Officer, Class II. So far as the interregnum is concerned, it is for the respondents to pass appropriate order how it has to be dealt with. Rule stands disposed of in the aforesaid terms with no order as to costs.

zgs/-